IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.
WRIT PETITION NO.2208 OF 2006

M/s. Pyramid Corporation ..Petitioner.
Vs.
Municipal Corporation of Greater Bombay & anr. ..Respondents.
...
Ms. Nita Madhyan i/b M/s. S.M. Associates for the Petitioner.
Ms. A.R. Joshi for the BMC.
Ms. S.M. Dandekar, AGP for the State.
Ms. Kiran Bagalia for MMRDA.
...
CORAM: DR. D.Y. CHANDRACHUD, J.
18th October, 2006.

P.C. :

Rule, returnable by consent forthwith. Counsel for the Respondents waive service. By consent taken up for final disposal at this stage.

1. The Petitioner before the Court is a registered partnership firm and by these proceedings under Article 226 of the Constitution a challenge has been instituted to an order passed by the Executive Engineer of the Mumbai Metropolitan Region Development Authority on 14th August, 2006. By the impugned order MMRDA has concluded that the structure in the occupation of the Petitioner is unauthorized and that it is consequently

required to be removed in pursuance of the notice that was issued under Section 351 of the Mumbai Municipal Corporation Act, 1888.

2. MMRDA has been appointed by the State Government as the Nodal Agency for the Mumbai Urban Infrastructure Project (MUIP). The structure of the Petitioner falls within the road width of 30.5 mtrs of Sant Rohidas Marg (Sion Dharavi Road). The eligibility of persons affected by the road widening for alternate accommodation is to be decided by the Municipal Corporation of Greater Mumbai.

3. The contention of the Petitioner is that in the year 1993, it acquired rights in respect of the property by a registered deed of conveyance. There were according to the Petitioner 129 tenants, of which 13 tenants were of shops, while the others were residential. The entire area is stated to have been declared as a slum in 1976. The property belonging to the Petitioner is known as Parsi Chawl at Dharavi and bears CTS No.530. On 29th November, 2001 notices came to be issued by the Estate

Department of the Municipal Corporation under Section 314 of the Mumbai Municipal Corporation Act, 1888, calling upon the occupants to produce documents relating to authorization of their structures.

4. According to the Petitioner, on 23rd December, 2002 the Municipal Corporation issued a communication observing that the structure was partly affected by road widening, and the tenants were allowed to add the affected area of the structure to the remaining part of the structure by a vertical increase, restricting the height to 17 ft. Thereafter on 23rd March, 2006 all the tenants received a notice under Section 351 of the Mumbai Municipal Corporation Act, 1888. Notices were also stated to have been issued in the name of one Jayesh Shah who is stated to be a partner of the Petitioner firm. A reply was submitted on 5th April, 2006. By an order dated 14th August, 2006 the Executive Engineer of MMRDA informed the Petitioner that no documents have been produced to show the existence of the structure prior to the datum line of 1st April, 1962 and that the structure was, therefore, liable to be demolished. That has resulted in the institution of the present

proceedings.

5. On behalf of the Petitioner it has been submitted that the action which was taken by the Municipal Corporation earlier in December 2002 when road widening was carried out would show that the structures were regarded as existing prior to the datum line, though according to the Petitioner the datum line should be 1st January, 1995 since the area has been declared as a slum. Hence, it has been submitted that MMRDA was not justified in August 2006 from taking a different decision at variance with the earlier decision of the Municipal Corporation.

6. MMRDA has filed an affidavit in reply in these proceedings in which it has been stated that the structure of the Petitioner is unauthorized and that the encroachments on the public road need to be removed for constructing the Development Plan Road. The affidavit recites that the Municipal Corporation finalizes the eligibility and renders advice to MMRDA on whether a person whose structure is to be demolished is eligible for

rehabilitation. Accordingly, MMRDA is stated to have forwarded the case of the Petitioner to the Municipal Corporation for deciding eligibility. The Municipal Corporation by its letter dated 9th August, 2006 is stated to have informed MMRDA that the Petitioner had not produced any document to prove that the structure was authorized. A list of eligible persons was supplied to MMRDA by the Municipal Corporation on the basis of which MMRDA would allot tenements. In so far as the Petitioner is concerned, it has been stated that no documents have been produced to show that the structure was authorized.

7. After the order was passed by MMRDA on 14th August, 2006, the Petitioner addressed a letter dated 16th August, 2006 purporting to forward therein a photocopy of the property tax bill for the period from 1st April, 1961 to 30th September, 1961 which was alleged to have been received from the previous landlord. A copy of the forwarding letter together with the alleged bill for property tax for 1961-62 is annexed to the Petition.

8. The Municipal Corporation has through learned counsel appearing before the Court produced for the perusal of the Court the relevant file in the present case. Counsel appearing for the Municipal Corporation has also produced the assessment extract relating to the structure in question. The assessment record would show that the structure was first assessed in 1979-80 while the latest assessment is for the year 2005-06. In so far as the Petitioner is concerned, these proceedings have been confined, during the course of the submissions, to the claim of the Petitioner for the allotment of alternative premises in lieu of three shops (which are referred to in the file note of the Municipal Corporation as Shops 77, 78 and 79). MMRDA has in its affidavit referred to the position that it is for the Municipal Corporation to determine eligibility in the first instance. Counsel appearing for the Municipal Corporation has stated before the Court that since the area has been declared as a slum, the cut off date that must be applied is 1st January, 1995. It would appear that MMRDA had applied the cut off date of 1st April, 1962 without reference to the eligibility as framed by the Municipal Corporation.

9. Having regard to the background of the case which is noted herein above, it would, in my view, be necessary that the eligibility of the Petitioner for the allotment of alternate accommodation is reconsidered afresh by the Municipal Corporation. In order to facilitate this process, it would be open to the Petitioner to file a fresh representation to the Second Respondent with a copy to the Assistant Commissioner, G-North Ward of the First Respondent. The Assistant Commissioner of the First Respondent shall on scrutinizing the documents produced by the Petitioner submit a report thereon to the Second Respondent which shall take a decision on the application filed by the Petitioner for the allotment of alternate accommodation in accordance with the existing policy. Upon a representation being submitted within a period of three weeks from today, the Municipal Corporation shall forward its report to the Second Respondent within a period of six weeks upon which the Second Respondent shall take a final decision within a period of four weeks from the date of receipt of the report of the Municipal Corporation. While

disposing of this Petition, it is however made clear that the demolition of the premises which is required to be carried out in the public interest to facilitate the process of road widening is not stayed by the present order and it will be open to the concerned authorities to take necessary steps in that regard subject to such final decision as is taken in regard to the eligibility of the Petitioner for alternate accommodation. The Petition is accordingly disposed of. In the circumstances., there shall be no order as to costs.